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6 as successor to THE ATCHISON, TOPEKA & SANTA FE
7 RAILWAY COMPANY

8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 THE ATCHISON, TOPEKA & SANTA FE
12 RAILWAY COMPANY, et al.,

13 Plaintiffs,

14 v.

15 HERCULES INCORPORATED, et al.,

16 Defendants.

17 Case No.: 1:96-cv-05879 OWW DLB
(CONSOLIDATED SHAFTER CASES)

18 **JUDGMENT FOR BNSF RAILWAY
COMPANY AND THE DOW
CHEMICAL COMPANY AGAINST
BROWN & BRYANT, INC. AND JOHN
H. BROWN**

19 [Fed. R. Civ. P. 54(b)]

20 **THE HONORABLE OLIVER W.
WANGER**

21 On July 26, 2010, the Court issued Order Adopting Findings and Recommendations and
22 Imposing Terminating Sanctions Against the Brown & Bryant Parties (Brown & Bryant, Inc., John
23 H. Brown, an individual, and Ed. A. Brown, an individual) for their willful failure to comply with
24 the Court's discovery orders ("Order Imposing Terminating Sanctions"). The Order Imposing
25 Terminating Sanctions provides, *inter alia*, that default judgment be entered against the Brown &
26 Bryant Parties in favor of BNSF Railway Company ("BNSF") and The Dow Chemical Company
27 ("Dow") as to their remaining claims in this action against the Brown & Bryant Parties.

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JUDGMENT IN FAVOR OF BNSF RAILWAY COMPANY AND THE DOW CHEMICAL
COMPANY AGAINST BROWN & BRYANT, INC. AND JOHN H. BROWN
Case No. CIV-F-96-5879 OWW/DLB

1 On March 29, 2011, Dow filed a Motion for Determination of Recoverable Response Costs
2 and Entry of Judgment Against the Brown & Bryant Parties (“Dow Motion”). On April 15, 2011,
3 BNSF filed a Motion for Entry of Judgment Against the Brown & Bryant Parties (“BNSF
4 Motion”). David R. Griffin, counsel of record for the Brown & Bryant Parties, was given notice of
5 the BNSF Motion, and on April 29, 2011, Mr. Griffin filed a written non-opposition to the granting
6 of the Dow Motion and the BNSF Motion on behalf of Brown & Bryant Inc. and John H. Brown.
7 On May 20, 2011, the Court granted Dow’s Motion and BNSF’s Motion as to Brown and Bryant,
8 Inc. and John H. Brown.¹

9 In accordance with Federal Rule of Civil Procedure 52(c), the Court hereby makes the
10 following findings of fact and conclusions of law:

- 11 a. On July 26, 2010, default was entered against the Brown & Bryant Parties pursuant to
12 the Court’s Order Imposing Terminating Sanctions for the Brown & Bryant Parties’
13 willful failure to comply with discovery orders. (Document No. 460)
- 14 b. In accordance with Federal Rule of Civil Procedure 55 and *Adriana Int’l Corp. v.*
15 *Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990)(citing *Geddes v. United Financial*
16 *Group*, 559 F.2d 557, 560 (9th Cir. 1977)), the factual allegations contained in BNSF’s
17 Second Amended Complaint against the Brown & Bryant Parties and Dow’s
18 Counterclaim for Cost Recovery and Contribution against the Brown & Bryant Parties
19 are presumed to be true in assessing the damages to which BNSF and Dow are entitled.
- 20 c. BNSF and Dow have established a *prima facie* case of CERCLA liability against the
21 Brown & Bryant Parties, as shown by the following facts:
 - 22 i. the 15-acre site located at 135 Commercial Street in Shafter, California (“the B&B
23 Shafter Site”) is a “facility” within the meaning of that term under CERCLA, 42
24 U.S.C. Sections 9601(9);
 - 25 ii. there has been a “release” or threatened release of a “hazardous substance” at or
26 from the facility within the meaning of those terms under CERCLA, 42 U.S.C. §§

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¹ Ed Brown is deceased and judgment is not entered against his estate.

9601(22) and (14), respectively;

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 27 a. That BNSF recover from Brown & Bryant, Inc. and John H. Brown, jointly and
28 severally, the sum of \$3,721,868.23 for response costs incurred from June 14, 1991

1 through April 1, 2011, at the B&B Shafter Site.

- 2 b. That Dow recover from Brown & Bryant, Inc. and John H. Brown, jointly and
3 severally, the sum of \$917,606.39 for response costs incurred from December 1993
4 through October 2009 at the B&B Shafter Site.
- 5 c. That BNSF recover costs of suit from Brown & Bryant, Inc. and John H. Brown, jointly
6 and severally.
- 7 d. That Dow recover costs of suit from Brown & Bryant, Inc. and John H. Brown, jointly
8 and severally.
- 9 e. The matter having been fully adjudicated, the Court finds no just reason for delaying
10 entry of final judgment for BNSF and Dow, and final judgment pursuant to Federal
11 Rule of Civil Procedure 54(b) hereby is and shall be entered in favor of BNSF and Dow
12 and against Brown & Bryant, Inc. and John H. Brown.

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IT IS SO ORDERED.

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Dated: June 8, 2011

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/s/ OLIVER W. WANGER
United States District Court Judge

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